

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.B., individually and on behalf of M.B., a child with a disability,

Plaintiffs, **COMPLAINT**
-against-

NEW YORK CITY DEPARTMENT OF EDUCATION.

Defendant.

A.B., individually and on behalf of M.B., a child with a disability, by and through her attorneys.

LAW OFFICE OF ANDREW K. CUDDY, for her complaint hereby alleges:

1. This is an action brought pursuant to the fee-shifting provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(i)(3).
2. Plaintiff A.B. resides in the County of New York, State of New York.
3. Plaintiff M.B. is a child with a disability as defined by IDEA, 20 U.S.C. § 1401(3)(A).
4. A.B. is the parent of M.B. as defined by IDEA, 20 U.S.C. § 1401(23).
5. Defendant NEW YORK CITY DEPARTMENT OF EDUCATION is a local educational agency as defined by IDEA, 20 U.S.C. § 1401(19), and, as such, is obligated to provide educational and related programs and services to its students in compliance with the applicable federal and state statutes, regulations, and the U.S. Constitution, and is subject to the requirements of 20 U.S.C. § 1400 *et seq.*, and the regulations promulgated thereunder.

JURISDICTION AND VENUE

6. Jurisdiction is predicated upon 28 U.S.C. § 1331, which provides the district courts with original jurisdiction over all civil actions arising under the laws of the United States, and upon the fee-shifting provision of IDEA, 20 U.S.C. § 1415(i)(3)(A), which provides that the district courts

of the United States shall have jurisdiction of actions brought under section 1415(i)(3) without regard to the amount in controversy.

7. Venue is predicated upon 28 U.S.C. § 1391(b)(1) based upon the residence of the plaintiffs and defendant, and upon 28 U.S.C. § 1391(b)(2) based upon the location of the subject matter of this action.

FACTUAL BACKGROUND

8. M.B. was born in 1998 and is classified as a student with an intellectual disability pursuant to IDEA.

9. By letter dated October 17, 2011, plaintiff parent A.B., through her attorneys, requested an impartial due process hearing under the provisions of IDEA, 20 U.S.C. § 1415.

10. Defendant appointed Leah Murphy, Esq., as impartial hearing officer (IHO).

11. IHO Murphy presided over a hearing on December 19, 2011.

12. On January 17, 2012, IHO Murphy issued a statement of agreement and order.

13. The statement of agreement and order directed that, no later than January 31, 2012, the defendant will:

1. conduct and audiological examination of M.B.;
2. reconvene the committee on special education to review any triennial testing, including the audiological examination;
3. develop a new individualized education program for M.B.;
4. issue a related services authorization (RSA), providing for occupational therapy services one-to-one for 40 one-hour sessions;
5. issue a letter excusing the record of 13 "tardies" for the 2009/10 school year;
6. provide the plaintiff with a form to be filled out by M.B.'s physician regarding assessment of M.B.'s transportation needs;
7. complete a vocational level 1 assessment of M.B.

FIRST CAUSE OF ACTION

14. Plaintiffs repeat and reallege paragraphs 1 through 13 as if more fully set forth herein.
15. Plaintiff parent initiated an impartial hearing on behalf of M.B.
16. The plaintiffs prevailed at the impartial hearing by obtaining a statement of agreement and order from the IHO ordering various relief demanded by plaintiffs.
17. Plaintiffs having prevailed in the underlying proceedings hereby demand reasonable attorneys' fees and costs pursuant to 20 U.S.C. § 1415(i)(3).

WHEREFORE, plaintiffs respectfully request that this Court:

- (1) Assume jurisdiction over this action;
- (2) Award to the plaintiffs costs, expenses and attorneys' fees for the administrative proceedings pursuant to 20 U.S.C. § 1415;
- (3) Award to the plaintiffs the costs, expenses and attorneys' fees of this action pursuant to 20 U.S.C. § 1415; and
- (4) Grant such other and further relief as the Court deems just and proper.

Dated: Auburn, New York

April 13, 2012

Yours etc.,

s/ Andrew K. Cuddy

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